



Billing Code 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2020-0012]

Retail Exemptions Adjusted Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the dollar limitations on the amount of meat and meat food products and poultry and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements. Because Siluriformes fish have been regulated, along with traditional meat products, under the Federal Meat Inspection Act since 2016, FSIS has included Siluriformes fish and fish products in its calculations for the retail dollar limitation for meat products in this announcement. FSIS requests comments on the inclusion of Siluriformes fish and fish products with meat products.

DATES: *Applicable* **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments on this notice must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2020-0012. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202)720-5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250-3700; (202) 720-5627.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide a comprehensive statutory framework to ensure that meat and meat food products and poultry and poultry products prepared for commerce are wholesome, not adulterated, and properly labeled and packaged. Statutory provisions requiring inspection of the processing of meat and meat food products and poultry and poultry products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants in regard to products offered for sale to consumers in normal retail quantities (21 U.S.C. 661(c)(2) and 454(c)(2)). FSIS's regulations (9 CFR 303.1(d) and 381.10(d)) elaborate on the conditions under which requirements for inspection do not apply to retail operations involving the preparation of meat and meat food products and the processing of poultry and poultry products.

Sales to Hotels, Restaurants, and Similar Institutions

Under the aforementioned regulations, sales to hotels, restaurants, and similar institutions (other than household consumers) disqualify a retail store from exemption if the retail product sales exceed either of two maximum limits: 25 percent of the dollar value of the total retail product sales of the amenable product or the calendar year retail dollar limitation set by the FSIS Administrator. The retail dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, shows an increase or decrease of more than \$500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted retail dollar limitations in the **Federal Register**. (See 9 CFR 303.1(d)(2)(iii)(b) and 381.10(d)(2)(iii)(b).)

The CPI for 2019 reveals an annual average price increase for meat and meat food products at 1.30 percent and an annual average price decrease for poultry and poultry products at 0.3 percent. When rounded to the nearest \$100 dollar, the retail dollar limitation for meat and meat food products increased by \$1,000 and the retail dollar limitation for poultry and poultry products decrease by \$200. In accordance with 9 CFR 303.1(d)(2)(iii)(b) and 381.10(d)(2)(iii)(b), because the retail dollar limitations for meat and meat food products increased by

more than \$500 and FSIS then included an additional \$2,500¹ to account for Siluriformes fish and fish product retail sales in the 2020 calculation, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to \$79,200 for meat and meat food products for calendar year 2020. Because the decrease in poultry prices is less than \$500, FSIS is making no adjustment in the dollar limitation for poultry and poultry products. The dollar limitation for poultry and poultry products remains unchanged at \$56,600 for calendar year 2020.

Adjustment to Account for Siluriformes Methodology

FSIS used the 2012 Economic Census,² the 2017 Economic Census,³ the 2017 Food Industry Association's (FMI) Supermarket Sales,⁴ the 2017 National Fisheries Institute's (NFI) consumption data,⁵ and the Bureau of Labor Statistics' CPI⁶ to estimate the total sales of Siluriformes fish and fish products at retail. FSIS then used the methodology in the October 3, 1970 "Revision

¹ Please see Adjustment to Account for Siluriformes Methodology section for more information about how this amount was calculated.

² 2012 Economic Census of the United States. Table EC1244SSSZ1 Retail Trade: Subject Series - Estab & Firm Size: Summary Statistics by Sales Size of Establishments for the U.S. NAICS 44511 Supermarkets and other grocery (except convenience) stores.

³ 2017 Economic Census of the United States. Table EC1700BASIC. NAICS 44511 Supermarkets and other grocery (except convenience) stores.

⁴ Food Industry Association (2017) Supermarket Sales by Department-Percent of Total Supermarket Sales. Accessed on March 6, 2020: https://www.fmi.org/docs/default-source/research/supermarket-sales-by-department-2018fd94300324aa67249237ff0000c12749.pdf?sfvrsn=2c3e576e_0

⁵ National Fisheries Institute. (2018, December 13). Top 10 List Shows Significant Increase in Seafood Consumption. Accessed on March 9, 2020: https://www.aboutseafood.com/press_release/top-10-list-shows-significant-increase-in-seafood-consumption/ .

⁶ Bureau of Labor Statistics. Consumer Price Index. Fish and seafood in U.S. city average, all urban consumers, not seasonally adjusted (CUUR0000SEFG).

Pursuant to Wholesome Meat Act" final rule (35 FR 15552), which established the initial baseline value used for the meat and poultry retail exemptions, to determine the percentage of exempted sales⁷.

According to the 2017 Economic Census there were \$625 billion in supermarket sales. The 2017 FMI report noted that 12.64 percent, or \$79 billion, of supermarket sales were for meat, poultry, and fish. FSIS assumed a third of these sales, or \$26 billion, were for fish products. FSIS then used NFI's 2017 Top Ten List to estimate the total sales of Siluriformes at retail. NFI's Top Ten List breaks down the pounds per capita consumption rate of fish in the U.S.; the sum of the consumption of Catfish and Pangasius was 7.75 percent of total fish consumption. FSIS assumed that the percentage of the domestic consumption of Catfish and Pangasius represented the percentage of Siluriformes retail sales, thus Siluriformes sales were estimated to be \$26 billion multiplied by 7.75 percent, or \$2 billion. Following the final rule's methodology to exempt half of the percentage of Siluriformes sales, in this case 3.88 percent, the fish retail exemption total is \$79 million.

The 2012 Economic Census has sales revenue ranges for supermarket sales. FSIS applied the 2017 Economic Census numbers to the proportions in the 2012 Economic Census. FSIS then

⁷ In the final rule, the exemption percentage was half the percentage of sales.

calculated the midpoint sales for each range and multiplied the midpoint by the number of retail establishments in each sales category to estimate total sales per category. FSIS then used the same calculations above to determine the Siluriformes sales per category. Finally, FSIS used the midpoint sales amounts to sum the number of retail establishments in each sales category until the total Siluriformes fish and fish products revenue amount was less than or equal to \$79 million. This calculation would exempt approximately 33,722 retail establishments. The exemption amount per retail establishment would equal \$79 million divided by 33,722 retail establishments, or about \$2,376⁸ per retail establishment. This number was inflated to \$2,466⁹ and then rounded to the nearest hundred to equal \$2,500 per establishment. FSIS requests comments on the inclusion of Siluriformes fish and fish products in the retail exemption dollar limitation for all meat products.

Congressional Review Act

Pursuant to the Congressional Review Act at 5 U.S.C. 801 et seq., the Office of Information and Regulatory Affairs has determined that this notice is not a "major rule," as defined by 5 U.S.C. 804(2).

⁸ Calculations may differ due to rounding.

⁹ Bureau of Labor Statistics: CPI-All Urban Consumers (Current Series): CUUR0000SEFG: Not Seasonally Adjusted: Fish and seafood U.S. city average: Annual. CPI (2017) = 287.676; CPI (2019) = 298.493; $(298.493 - 287.676) / 287.676 = 3.8\%$; $\$2,376 + (\$2,376 * 0.038) = \$2,466$

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** notice on-line through its Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** notice through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS Web page. Through the FSIS Web page, the Agency can provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at:

<http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Paul Kiecker,

Administrator.

[FR Doc. 2020-13913 Filed: 6/26/2020 8:45 am; Publication Date: 6/29/2020]